

**BellSouth D.C., Inc.**  
**Legal Department**  
Suite 900  
1133 21st Street, N.W.  
Washington, D.C. 20036-3351

bennett.ross@bellsouth.com

**Bennett L. Ross**  
General Counsel-D.C.

202 463 4113  
Fax 202 463 4195

December 8, 2004

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313;

*Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338;

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") submits this response to a recent ex parte from XO Communications, Inc. ("XO") that makes certain allegations concerning the conversion of special access circuits to unbundled network elements ("UNEs").<sup>1</sup> Such allegations as they relate to BellSouth are completely false.

While acknowledging that it purchases special access, XO claims that it is "rarely a willing purchaser," insisting that it is "forced" to order special access "because the ILECs refuse to 'construct' facilities, including the installation of line cards or other minor electronic components."<sup>2</sup> Although XO never mentions BellSouth by name, as BellSouth has repeatedly made clear, and this Commission has confirmed, BellSouth will construct facilities in order to provision UNEs and has never had a "no facilities available" policy about which XO is complaining.<sup>3</sup> BellSouth's performance in meeting its UNE installation appointments continues

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<sup>1</sup> Ex Parte letter from Brad E. Mutschelknaus, Counsel to XO Communications, Inc., to Marlene Dortch, Secretary, FCC (December 7, 2004) ("*XO Ex Parte*").

<sup>2</sup> *XO Ex Parte*, at 2.

<sup>3</sup> See Ex Parte letter from Bennett L. Ross, Counsel to BellSouth, to Marlene Dortch, Secretary, FCC (Dec. 7, 2004); Reply Affidavit of Shelley W. Padgett, ¶ 5; Memorandum of Opinion and Order, *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Long Distance, Inc. For Provision of In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, FCC 02-331, ¶ 140 (2002).

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to be outstanding, and XO fails to cite or provide any data indicating otherwise. Thus, the special access circuits that XO has obtained from BellSouth were purchased by XO for its own business reasons and not because XO "forced" to do so.<sup>4</sup>

XO also insists that it has been "effectively denied" the right to convert special access circuits to standalone UNEs because of allegedly "exorbitant" rates BellSouth has proposed to charge.<sup>5</sup> However, XO neglects to mention that its current interconnection agreement does not address conversions of special access circuits to standalone UNEs and contains no rates for such conversions. BellSouth sought to remedy this situation in December 2003 by providing XO with an amendment to the current agreement that would have incorporated all applicable terms from the *Triennial Review Order*, including giving XO the contractual right to convert special access circuits to standalone UNEs at TELRIC prices.<sup>6</sup>

However, *XO refused to sign the amendment*. In fact, XO has refused to engage in any substantive negotiations with BellSouth regarding amending the parties' interconnection agreement to comply with the *Triennial Review Order*.<sup>7</sup> Thus, the "resistance" that XO has allegedly encountered with respect to special access conversions is solely the result of XO's refusal to conform its interconnection agreement to reflect the current state of the law.

Please include this letter in the record in the above-referenced proceedings. Thank you for your attention to this matter.

Sincerely,



Bennett L. Ross

BLR:kjw

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<sup>4</sup> The *XO Ex Parte* is long on rhetoric, but short on facts. While insisting that the problems it allegedly has experienced in obtaining unbundled DS-1 loops "have not been isolated occurrences and continue to this day in its existences with all the major ILECs," XO provides no facts to support such claims. Indeed, the only "evidence" offered by XO is a November 29, 2004, letter from XO to SBC which identifies a grand total of *two* unbundled DS-1 loop orders in California about which XO had raised concerns.

<sup>5</sup> *XO Ex Parte*, at 4.

<sup>6</sup> Section 1.7 of Attachment 2 to BellSouth's current standard interconnection agreement provides that "[u]pon request, BellSouth shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element, or Combination that is available to [CLEC] under this Agreement. Nonrecurring switch as is rates for conversion to Network Elements or Combinations are contained in Exhibit A of this Attachment." The referenced rates set forth in Exhibit A are TELRIC rates.

<sup>7</sup> Reply Affidavit of Shelley W. Padgett ¶11.

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cc: Christopher Libertelli  
Matthew Brill  
Jessica Rosenworcel  
Daniel Gonzalez  
Scott Bergmann  
Jeffrey Carlisle  
Michelle Carey  
Thomas Navin  
Jeremy Miller  
Ian Dillner

Russell Hanser  
Marcus Maher  
Austin Schlick  
John Stanley  
Christopher Killion  
Jeffrey Dygert  
Pamela Arluk

#562374